



February 18, 2009

## SENATE BILL No. 419

DIGEST OF SB 419 (Updated February 16, 2009 12:21 pm - DI 52)

**Citations Affected:** IC 13-11; IC 13-15; IC 13-18.

**Synopsis:** Quality of surface waters. Allows the department of environmental management (IDEM) to establish for a surface water the total maximum daily load for a pollutant only if in identifying the surface water IDEM identifies the pollutant under consideration. Allows IDEM to include a subsequently discovered pollutant in a total maximum daily load if IDEM demonstrates that the surface water is impaired by the pollutant, notifies all interested parties, and holds a public meeting and accepts comments. With respect to all surface waters of the state other than outstanding national resource waters, requires IDEM to complete an antidegradation review of rules that authorize NPDES general permits. After the review is conducted, limits the authority of the board to adopt a rule to apply antidegradation standards and implementation procedures. With respect to determinations whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, lists factors to be considered by the IDEM commissioner and provides that substantial weight must be given to any applicable determinations by the state or a political subdivision. Establishes a deadline for IDEM to adopt antidegradation standards and implementation procedures and to act on applications for approval of associated NPDES permits. Allows the IDEM commissioner to extend for cause for not more than 90 days the deadline for IDEM to adopt antidegradation standards and implementation procedures.

**Effective:** Upon passage.

**Gard, Tallian**

January 12, 2009, read first time and referred to Committee on Energy and Environmental Affairs.  
February 17, 2009, amended, reported favorably — Do Pass.

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February 18, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 13-11-2-90 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 90. "Governmental  
3 entity", for purposes of **IC 13-18-3 and** IC 13-25-6, means the state or  
4 a political subdivision.
- 5 SECTION 2. IC 13-15-4-1 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as  
7 provided in sections 2, 3, and 6 of this chapter, the commissioner shall  
8 approve or deny an application filed with the department after July 1,  
9 1995, within the following number of days:
- 10 (1) Three hundred sixty-five (365) days for an application  
11 concerning the following:
- 12 (A) A new hazardous waste or solid waste landfill.  
13 (B) A new hazardous waste or solid waste incinerator.  
14 (C) A major modification of a solid waste landfill.  
15 (D) A major modification of a solid waste incinerator.  
16 (E) A new hazardous waste treatment or storage facility.  
17 (F) A new Part B permit issued under 40 CFR 270 et seq. for

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an existing hazardous waste treatment or storage facility.

(G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.

(2) **Except as provided in IC 13-18-3-2.1**, two hundred seventy (270) days for an application concerning the following:

(A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.

(B) A major new National Pollutant Discharge Elimination System permit.

(3) **Except as provided in IC 13-18-3-2.1**, one hundred eighty (180) days for an application concerning the following:

(A) A new solid waste processing or recycling facility.

(B) A minor new National Pollutant Discharge Elimination System individual permit.

(C) A permit concerning the land application of wastewater.

(4) **Except as provided in IC 13-18-3-2.1**, one hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

(5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.

(6) Ninety (90) days for an application concerning the following:

(A) A minor modification to a solid waste landfill or incinerator permit.

(B) A wastewater facility or water facility construction permit.

(7) The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:

(A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.

(B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).

(C) Registration of an air pollution facility.

(8) Sixty (60) days for an application concerning the following:

(A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:

(i) landfill;

(ii) incinerator;

(iii) treatment facility; or

(iv) storage facility.

(B) Any other permit not specifically described in this section for which the application fee exceeds forty-nine dollars (\$49)

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and for which a time frame has not been established under section 3 of this chapter.

(b) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a renewal permit under the rules of one (1) of the boards, the commissioner shall approve or deny the application on or before the expiration date stated in the permit for which renewal is sought.

SECTION 3. IC 13-18-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with federal regulations implementing Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether a water body is impaired, the department shall consider all existing and readily available water quality data and related information. The department, before submitting the list to the United States Environmental Protection Agency, shall:

- (1) publish the list in the Indiana Register;
- (2) make the list available for public comment for at least ninety (90) days; and
- (3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule must specify the methodology and criteria for including and removing waters from the list of impaired waters.

(c) Except as provided in subsection (d), the department may establish for a surface water the total maximum daily load for a pollutant under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)) only if, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), the department identifies the pollutant as a pollutant under consideration for the establishment of the total maximum daily load.

(d) This subsection applies if, after meeting the requirements of subsection (c) with respect to a pollutant, the department discovers one (1) or more other pollutants that the department believes should be included in the total maximum daily load for the surface water. The department may include the other pollutant or pollutants in the total maximum daily load for the surface water if the department does the following before making the pollutant or

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**pollutants the subject of consideration for the establishment of the total maximum daily load:**

**(1) Demonstrates that the surface water is impaired by the pollutant or pollutants.**

**(2) Notifies all interested parties.**

**(3) Holds a public meeting and accepts comments.**

SECTION 4. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

(c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.

(d) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

(e) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

(f) "Watershed" has the meaning set forth in IC 14-8-2-310.

(g) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than

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three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(i) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (g) and (h), including the board's conclusions concerning that information.

(j) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

(k) Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

(l) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are met.

(m) The procedures provided by rule under subsection (l) must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one

(1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water or exceptional use water:

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(A) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000) **to accomplish a project described in clause (A)**, based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter.

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.

(n) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(o) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

(p) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

**(q) This subsection applies to all surface waters of the state other than outstanding national resource waters. If the board adopts an antidegradation rule after January 1, 2009, immediately**

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upon adoption of the rule the department shall complete an antidegradation review of the rules in 327 IAC 15-5 through 327 IAC 15-15 that authorize the NPDES general permits that are in effect on January 1, 2009. After the antidegradation review is conducted, the board may not adopt a rule to apply antidegradation standards and implementation procedures to activities covered by an NPDES general permit authorized by a rule in 327 IAC 15-5 through 327 IAC 15-15.

(r) The commissioner shall consider the following factors in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures:

- (1) Creation, expansion, or maintenance of employment.
- (2) Reduction of the unemployment rate.
- (3) Increase of median household income.
- (4) Reduction of the number of households below the poverty level.
- (5) Increase of the supply of needed housing.
- (6) Increase of the community tax base.
- (7) Provision of fire departments, schools, infrastructure, and other necessary public services.
- (8) Correction of a public health, safety, or environmental problem.
- (9) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.
- (10) Improvement or reduction of the quality of life for residents in the area.
- (11) Promotion or harming of the fishing, recreation, and tourism industries.
- (12) Enhancement or harming of threatened and endangered species.
- (13) Maintenance of economic competitiveness.
- (14) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (13) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.
- (15) Inclusion by the applicant of additional factors that may enhance the social or economic benefits associated with the new or increased pollutant discharge, such as the approval to build a new facility given to the applicant by:

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- (A) a legislative body;
- (B) a local planning commission; or
- (C) other government officials.

(16) Any other action or recommendation relevant to the antidegradation demonstration made by a:

- (A) state;
- (B) county;
- (C) township; or
- (D) municipality;

potentially affected by the new or increased pollutant discharge.

(s) In determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, the commissioner must give substantial weight to any applicable determinations by governmental entities.

SECTION 5. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1. (a) If a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought, the deadline for the department to adopt antidegradation standards and implementation procedures under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.

(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to adopt antidegradation standards and implementation procedures.

SECTION 6. An emergency is declared for this act.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 419, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-90 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 90. "Governmental entity", for purposes of **IC 13-18-3** and IC 13-25-6, means the state or a political subdivision."

Page 3, delete lines 24 through 33, begin a new paragraph and insert:

**"(c) Except as provided in subsection (d), the department may establish for a surface water the total maximum daily load for a pollutant under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)) only if, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), the department identifies the pollutant as a pollutant under consideration for the establishment of the total maximum daily load.**

**(d) This subsection applies if, after meeting the requirements of subsection (c) with respect to a pollutant, the department discovers one (1) or more other pollutants that the department believes should be included in the total maximum daily load for the surface water. The department may include the other pollutant or pollutants in the total maximum daily load for the surface water if the department does the following before making the pollutant or pollutants the subject of consideration for the establishment of the total maximum daily load:**

- (1) Demonstrates that the surface water is impaired by the pollutant or pollutants.**
- (2) Notifies all interested parties.**
- (3) Holds a public meeting and accepts comments."**

Page 5, line 34, after "(\$500,000)" insert **"to accomplish a project described in clause (A),"**

Page 6, delete lines 24 through 42, begin a new paragraph and insert:

**"(q) This subsection applies to all surface waters of the state other than outstanding national resource waters. If the board adopts an antidegradation rule after January 1, 2009, immediately**

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upon adoption of the rule the department shall complete an antidegradation review of the rules in 327 IAC 15-5 through 327 IAC 15-15 that authorize the NPDES general permits that are in effect on January 1, 2009. After the antidegradation review is conducted, the board may not adopt a rule to apply antidegradation standards and implementation procedures to activities covered by an NPDES general permit authorized by a rule in 327 IAC 15-5 through 327 IAC 15-15.

(r) The commissioner shall consider the following factors in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures:

- (1) Creation, expansion, or maintenance of employment.
- (2) Reduction of the unemployment rate.
- (3) Increase of median household income.
- (4) Reduction of the number of households below the poverty level.
- (5) Increase of the supply of needed housing.
- (6) Increase of the community tax base.
- (7) Provision of fire departments, schools, infrastructure, and other necessary public services.
- (8) Correction of a public health, safety, or environmental problem.
- (9) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.
- (10) Improvement or reduction of the quality of life for residents in the area.
- (11) Promotion or harming of the fishing, recreation, and tourism industries.
- (12) Enhancement or harming of threatened and endangered species.
- (13) Maintenance of economic competitiveness.
- (14) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (13) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.
- (15) Inclusion by the applicant of additional factors that may enhance the social or economic benefits associated with the new or increased pollutant discharge, such as the approval to build a new facility given to the applicant by:

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- (A) a legislative body;
- (B) a local planning commission; or
- (C) other government officials.

(16) Any other action or recommendation relevant to the antidegradation demonstration made by a:

- (A) state;
- (B) county;
- (C) township; or
- (D) municipality;

potentially affected by the new or increased pollutant discharge.

(s) In determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, the commissioner must give substantial weight to any applicable determinations by governmental entities.

SECTION 5. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.1. (a) If a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought, the deadline for the department to adopt antidegradation standards and implementation procedures under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.

(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to adopt antidegradation standards and implementation procedures."

Page 7, delete lines 1 through 29.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 419 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 11, Nays 0.

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